

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK S. REKTOR and U.S. POSTAL SERVICE,
POST OFFICE, Jefferson, OH

*Docket No. 02-1963; Submitted on the Record;
Issued January 6, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury on August 10, 2001 in the performance of duty causally related to factors of his employment.

On September 4, 2001 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim alleging that on August 10, 2001 he injured his back while moving a tray of mail from the rear of his vehicle. He indicated that his left leg became numb later that day. Appellant did not stop work.

In a report dated August 30, 2001, Dr. Amir Jaffer, appellant's attending internist, stated that appellant was seen for chronic back pain that seemed to have been exacerbated by his job. He listed work restrictions and indicated that appellant would be reevaluated in four to six weeks.

In a report dated September 4, 2001, Dr. Jaffer stated, "Please ignore my previous recommendations because [appellant's] medical condition has worsened with his current work." He provided new work restrictions.

In a report dated September 18, 2001, Dr. Jaffer stated that appellant should not deliver mail because it was exacerbating his condition and he provided other work restrictions. He indicated that appellant could work only four hours a day.

By decision dated October 23, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained a medical condition as a result of the August 10, 2001 work incident.

By letter dated November 6, 2001, appellant requested a hearing.

In a report dated August 30, 2001, Dr. Jaffer stated that appellant indicated that he had been working hard and began to have numbness in his left leg and mild back pain on or about

August 16, 2001 and later began to have right leg numbness. He provided findings on examination and diagnosed lumbago. Dr. Jaffer noted that appellant had a history of a herniated disc and now had radiculopathy. In an undated handwritten note, he wrote, "It is possible this started after the incident at work and could be work related."

A report of a magnetic resonance imaging (MRI) scan performed on September 17, 2001 indicated that appellant had a small herniated disc at L4-5.

In a report dated October 18, 2001, Dr. Jaffer indicated that appellant had chronic lower back pain. He stated: "Today [appellant] reports that he had an injury on August 10, 2001 and it happened after lifting a tray of mail." He provided findings on examination and diagnosed lumbago.

In a report dated October 23, 2001, Dr. Amarish Potnis stated that appellant experienced low back discomfort, especially when sitting. He provided findings on examination and diagnosed mechanical low back pain and a herniated lumbar disc.

On April 24, 2002 a hearing was held.

By decision dated June 27, 2002, the Office hearing representative affirmed the Office's October 23, 2001 decision.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on August 10, 2001.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be established whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹

In a report dated August 30, 2001, Dr. Jaffer, appellant's attending internist, stated that he was seen for chronic back pain that seemed to have been exacerbated by his job. He listed work restrictions and indicated that appellant would be reevaluated in four to six weeks. In a report dated September 18, 2001, Dr. Jaffer stated that appellant should not deliver mail because it was exacerbating his condition and he provided other work restrictions. He indicated that appellant could work only four hours a day. However, in these reports, Dr. Jaffer did not provide any physical findings or a diagnosis of appellant's condition. He did not provide any medical rationale explaining how appellant's back pain was caused or aggravated by his job. Therefore, these reports are insufficient to establish that appellant sustained an injury on August 10, 2001 causally related to factors of his employment.

In a report dated August 30, 2001, Dr. Jaffer stated that appellant indicated that he had been working hard and began to have numbness in his left leg and mild back pain on or about

¹ See *Louise F. Garnett*, 47 ECAB 639, 643 (1996); *John D. Carlone*, 41 ECAB 354, 357 (1989).

August 16, 2001 and later began to have right leg numbness. He provided findings on examination and diagnosed lumbago. Dr. Jaffer noted that appellant had a history of a herniated disc and now had radiculopathy. In an undated handwritten note, he wrote, "It is possible this started after the incident at work and could be work related." However, his opinion as to causal relationship is speculative and unsupported by medical rationale. Therefore, this report is insufficient to establish that appellant sustained a work-related injury on August 10, 2001.

In a report dated October 18, 2001, Dr. Jaffer indicated that appellant had chronic lower back pain. He stated, "Today [appellant] reports that he had an injury on August 10, 2001 and it happened after lifting a tray of mail." Dr. Jaffer provided findings on examination and diagnosed lumbago. However, he provided no medical rationale explaining how appellant's back condition was caused or aggravated by the August 10, 2001 incident when he lifted a tray of mail. Such medical rationale is critical in establishing causal relationship in light of the fact that Dr. Jaffer noted in his reports that appellant had a history of chronic back pain and a herniated disc.

In a report dated October 23, 2001, Dr. Potnis stated that appellant experienced low back discomfort, especially when sitting. He provided findings on examination and diagnosed mechanical low back pain and a herniated lumbar disc. However, Dr. Potnis provided no opinion as to the cause of appellant's condition. Therefore, this report is insufficient to establish that appellant sustained a work-related injury on August 10, 2001.

The decisions of the Office of Workers' Compensation Programs dated June 27, 2002 and October 23, 2001 are affirmed.

Dated, Washington, DC
January 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member